



**Legislative Bulletin.....April 23, 2008**

**Contents:**

**H.R. 5819—SBIR/STTR Reauthorization Act**

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**Summary of the Bill Under Consideration Today:**

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$41 million in FY 2009 and \$263 million over the FY 2009-FY 2013 period

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** 0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

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**H.R. 5819—SBIR/STTR Reauthorization Act (*Velazquez, D-NY*)**

**Order of Business:** H.R. 5819 is scheduled to be considered on April 23, 2008, subject to a structured rule ([H. Res. 1125](#)), making 17 amendments in order. The RSC will send a forthcoming document summarizing every amendment made in order.

**Summary:** H.R. 5819 would reauthorize the Small Business Innovation Research Program (SBIR) and the Small Business Technology Transfer Program (STTR) for two years, through September 30, 2010. The programs require certain federal agencies to set-aside a percentage of their extramural research and development budget for the purpose of developing projects produced by small businesses. The program consists of three phases of assistance and sees small

business projects through project development, implementation, and commercialization. H.R. 5819 would expand the amount of agency set-asides for SBIR and STTR programs and increase the maximum amount of individual awards for small businesses. The specific provisions of the bill are as follows.

#### ***Increased SBIR/STTR Set-Asides***

- Requires each federal agency to increase the percentage of research and development funds that are set-aside for the SBIR and STTR programs.
- The bill would require agencies to set-aside at least 3% of research and development funds for the SBIR program (increased from 2.5%). In addition, the bill would require agencies to set-aside at least 0.6% the percentage of research and development funds for the STTR program (increased from 0.3%).

#### ***Increased SBIR/STTR Award Levels***

- Increases the maximum dollar amount of individual awards given to small business participating in the SBIR and STTR programs from \$100,000 to \$750,000 for businesses participating in Phase I and from \$300,000 to \$2.2 million for business participating in Phase II.
- Requires that the maximum award amounts adjust annually to “reflect economic adjustments and programmatic considerations.”
- Authorizes an agency to grant awards above the maximum amount if that agency head notifies the Administrator of the SBA and the appropriate congressional committees.

#### ***SBIR Advisory Board***

- Requires each federal agency that grants more than \$50 million in SBIR awards annually to establish a SBIR Advisory Board for the purpose of encouraging participation in the SBIR program and supporting commercialization of federal research funded by SBIR awards.

#### ***Increase in Technical Assistance***

- Increases the amount of outside technical assistance that a small business may obtain through the SBIR’s technical assistance program. This section would also allow small businesses to opt-out of the technical assistance program. If a small business chooses to opt-out of the assistance program, it would receive \$2,500 above their initial award.

#### ***Increased Commercialization***

- Requires the SBA Administrator to annually submit a report to the appropriate congressional committees listing every small business that has received at least 15 Phase I SBIR awards in the past five years without receiving a Phase II award (given to more commercially viable research projects).
- Requires the SBA Administrator to ensure that agencies engage SBIR awardees that have been awarded multiple Phase I grants but have no Phase II awards.

### ***Limitations on Awards***

- Allows a small business to receive a Phase II or III SBIR award from a different agency than granted it the Phase I award. This section allows cross-agency funding in an effort to increase program flexibility.

### ***Audit of Extramural Research Budgets***

- Requires the Comptroller General of the U.S. to carry out a study of how agencies calculate research budgets for the purpose of determining the total amount of SBIR and STTR funding each agency provides.

### ***Venture Capital Investment Standards***

- Stipulates that a business concern with more than 500 employees shall not be considered a small business eligible for SBIR or STTR awards.
- Prohibits venture capital investments in a small business concern from being considered when determining whether or not a business is independently owned if the venture capital firm owns less than 50% of the small business. This has the net affect of allowing large venture capital companies that finance multiple businesses to be considered small businesses. This would allow companies that are **NOT** primarily owned and controlled by small business persons to obtain SBIR and STTR grants.
- Defines an “independently owned and operated” business concern as one that is owned and operated by one or more persons or one or more venture capital operating companies.
- Prohibits a small business that is more than 10% owned by large venture capital company (a venture capital company with more than 500 employees) from obtaining SBIR or STTR awards.

### ***Federal and State Technology Partnership Program (FAST)***

- Reauthorizes the Federal and State Technology Partnership Program (FAST), which provides grants to states to encourage innovative research and development among small businesses at the state level. Authorizes up to \$10 million annually for FY 2009 and FY 2010 to fund the FAST program.
- Authorizes the SBA Administrator to make FAST grants available to organizations that conduct outreach programs to increase participation in the program. Limits individual grant amounts under this section to \$250,000.
- Establishes a matching requirement which requires businesses in the 18 states that receive the least amount of FAST program funding to obtain matching funds equaling 50% of the grant. Organizations that receive grants in the 16 states that receive the most funding would be required to provide 100% matching funds. Companies in every other state would be required to supply 75% matching funds for each grant.

### ***Advancing Commercialization***

- Requires agencies that award \$5 billion or more in SBIR grants annually to establish specific goals regarding the percentage of SBIR projects that receive funding for Phase III, the percentage of programs that are successfully integrated into a notable program, and the amount of federal dollars received by SBIR projects through federal contracts.
- Requires each participating agency to submit their goals to the agency's SBIR advisory board.
- Requires each agency to establish initiatives to encourage participation between small businesses that win SBIR awards, contractors, and venture capital firms in order to facilitate SBIR awardees' progress into Phase III. The bill also gives agencies the ability to "fast-track" projects that yield promising research.
- Authorizes \$27.5 million for FY 2009 and each year thereafter for agencies to operate "commercialization programs" that support the progress of SBIR award winners towards Phase III. Suggested uses for the funds include "partnership databases, partnership conferences, multiple second phases, mentoring between prime contractors and SBIR awardees, multiple second phases with matching private investment requirements, jumbo awards, SBIR helpdesks, and transition assistance programs."
- Requires agency's advisory boards to include a report detailing efforts to enhance manufacturing activities in each annual report.

### ***Supporting Program Utilization***

- Requires agencies to develop databases in order to conduct program evaluations and coordinate technology utilizations.
- Requires agencies that provide SBIR awards to give special consideration to emergency, disease, and nanotechnology related research and priority to small businesses located in rural areas.

**Additional Background:** The Small Business Innovation Research Program (SBIR) and the Small Business Technology Transfer Program (STTR) were established by the Small Business Innovation Development Act in 1982 for the purpose of assisting small businesses compete for government research and development funds. The program is carried out in three hierarchical phases, with higher grant awards in the first two phases and an emphasis on commercialization assistance in the final stage. The first phase of the program involves establishing the scientific merit of the project, the second phase awards grants for businesses to complete the project and determine its commercial viability, while the third phase is comprised of applying the project commercially and obtaining funding for the project from non-government sources.

Every federal agency that has an extramural budget for research, or research and development, in excess of \$1 billion is required to participate in the SBIR and STTR programs. Currently, 11 different federal agencies participate in the two programs: the Department of Agriculture,

Department of Commerce, the Department of Defense, the Department of Education, the Department of Energy, the Department of Health and Human Services, the Department of Homeland Security, the Department of Transportation, the Environmental Protection Agency, the National Aeronautics and Space Administration, and the National Science Foundation. Under H.R. 5819, each of these agencies would be required to set-aside 3% of their extramural research budgets for SBIR programs and 0.6% for STTR programs.

**Possible Conservative Concerns:** Some conservatives may be concerned that H.R. 5918 would expand the definition of an “independently owned and operated business” to include businesses that are up to 50% controlled by a single venture capital company. Under the expanded definition, a wealthy venture capital company could hold a plurality of interest in a small technology company and obtain lucrative SBIR and STTR awards. Some conservatives may be concerned that the expanded definition may send funds set-aside to level the playing field for small, independent business to business concerns that are owned or operated by one or more venture capital company.

Some conservatives may be concerned that H.R. 5918 does not define an “independently owned and operated” venture capital company based on annual revenue. For instance, the Small Business Administration (SBA) generally defines a small business as a firm with less than 500 employees and less than \$6.5 million annual revenue for most industries. However, H.R. 5918 defines an “independently owned and operated” venture capital firm as a firm that employs less than 500 individuals, regardless of annual revenues. Some conservatives may be concerned that this definition would allow the vast majority of venture capital companies (which tend to have a smaller workforce but much higher revenues) to compete against independently owned small businesses for SBIR and STTR awards.

Some conservatives may be concerned the H.R. 5819 would dramatically expand the maximum amount of awards available through the SBIR and STTR programs and ease access to significantly more valuable awards. The bill would increase Phase I awards from \$100,000 to \$750,000 and Phase II awards from \$300,000 to \$2.2 million. In addition, the bill would allow businesses the opportunity to bypass Phase I and apply directly for Phase II awards. Some conservatives may be concerned that this may set up a scenario where “small” firms that are controlled by well financed and experienced venture capital companies may consume most SBIR program funds at the expense of independently owned, small companies that participate in the program.

Some conservatives may be concerned that H.R. 5819 would dramatically raise the mandatory agency set-asides for the SBIR and STTR programs and, as a result, may effectively cut some \$650 million from agency spending. The bill would heavily increase the percentage of extramural research funds that eleven different agencies are required to set-aside for small business programs. According to a Statement of Administration Policy (SAP) released on April 22, 2008, “The Administration does not support increasing these set-asides given the current absence of systematic performance measures beyond anecdotal successes.” Some conservatives may be concerned that H.R. 5819 would expand set-asides for the SBIR and STTR programs at the expense of proven, competitive procurement practices that are already in effect at these agencies.

**Committee Action:** H.R. 5819 was introduced on April 16, 2008, and referred to the Committee on Small Business and the Committee on Science and Technology. On April 18, 2008 the Small Business and the Committee reported the bill and a corresponding House Report ([House Report 110-595](#)).

**Administration Position:** According to a Statement of Administration Policy (SAP) released on April 22, 2008, “the Administration strongly opposes H.R. 5819 because its higher setasides for the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs, which would be funded through a levy on agencies’ external research budgets, would effectively cut \$650 million each year from the core, competitive research activities of the Department of Defense, the National Institutes of Health, NASA, the Department of Energy, the National Science Foundation, and other agencies.”

**Cost to Taxpayers:** According to CBO, H.R. 5819 would cost \$41 million in FY 2009 and \$263 million over the FY 2009-FY 2013 period (subject to appropriation).

**Does the Bill Expand the Size and Scope of the Federal Government?** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** The Small Business Committee, in [House Report 110-595](#), states that “H.R. 5819 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.”

**Constitutional Authority:** The Small Business Committee, in [House Report 110-595](#), cites constitutional authority in Article I, Section 8, Clause 18 (the “necessary and proper” clause), but fails to cite a specific “foregoing power” to which this clause refers..

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